IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION No : 8716 of 2004

Between:

Sri T.P.Varghese, s/o T.D.Porinchu,
r/o Tharayi House, Kotta Post, West Chalakudy,
Thrissur District, Kerala.

..... PETITIONER

AND

1 The Branch Manager, Catholic Syrian Bank Ltd.,
Branch Officer, Nellore, A.P.,
2 The Deputy Zonal Manager, Catholic Syrian Bank Ltd.,
Zonal Office, Ernakulam, Kerala State.
3 The Assistant General Manager (Personnel) (Disciplinary Authority),
Catholic Syrian Bank Ltd., Thirssur, Kerala State.
4 The Deputy General Manager (I & V) Head Office, Catholic Syrian
Bank Ltd., Thirssur, Kerala State.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in disallowing the request of the petitioner to stop the domestic enquiry to be conducted at 1st respondent premises in the light of Clause 19.4 of Standing Orders of the Catholic Syrian Bank Ltd., in view of the fact that the Judicial First Class Magistrate, Nellore seized the matter vide C.C.No.117 of2003 as illegal, improper and in violation of Articles 14 and 300-A of the Constitution of India, and consequently direct the respondents not to proceed with the domestic enquiry till the completion of the trial pending before the Judicial First Class Magistrate, Nellore in C.C.No.117 of 2003

Counsel for the Petitioner:MR JAYANTHI S.C. SHEKAR

Counsel for the Respondents: Mr. K.GOPALA KRISHNA MURTHY

The Court made the following :

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THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION NO.8716 OF 2004

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ORDER:

Heard Sri Jayanthi S.C. Shekar, the learned counsel appearing for the petitioner and Sri K.Gopala Krishna Murthy, the learned Standing Counsel appearing for the respondents 1 to 4.

The petitioner herein, who was working as a Clerk-Cum-Cashier with the respondent-Bank, filed this writ petition, *inter alia,* seeking for a writ of Mandamus to declare the action of the respondents in not acceding the request of the petitioner to stop or stall the domestic enquiry being conducted at the first respondent's premises in terms of Clause 19.4 of the Standing Orders of the Bank, having regard to the pendency of the criminal case in C.C.No.117 of 2003 on the file of the II Additional Judicial First Class Magistrate, Nellore, as bad, illegal and violative of Articles 14

and 300-A of the Constitution of India and also seeks further direction not to proceed with the domestic enquiry till the completion of the criminal trial.

The facts, in brief, are that while the petitioner was working as a Clerk-cum-Cashier at Nellore Branch with the respondent-Bank, a charge-sheet was issued on 16.01.2003, *inter alia,* on the allegations that by mis-using his official capacity, he trespassed into the Bank premises during the intervening night of 16/17.11.2002 and committed serious crimes such as theft, criminal misappropriation and breach of trust. Thereupon, the first respondent reported the matter to the Nellore Police and consequently the petitioner was arrested and committed to judicial custody by the Magistrate. Thereafter a charge sheet was filed in the said criminal case in C.C.No.117 of 2003 and the same is still pending for adjudication. However, it is pointed out on behalf of the petitioner that in spite of the fact that the criminal case is pending in respect of the very same allegations, the second respondent herein was appointed as an Enquiry Officer whereupon he got issued a notice for conducting domestic enquiry in respect of the said allegations and the charges made thereon by issuing notice dated 21.02.2004 stating that the enquiry will be conducted in the premises of the first respondent on 15.03.2004 and also on all subsequent days till the enquiry is completed. Accordingly, the enquiry was proceeded with to some extent in the presence of the petitioner and the Presenting Officer, Zonal Office, Chennai. The petitioner had raised objections during the said enquiry that since the criminal case is pending against him, the domestic enquiry cannot be proceeded with. Though the same was initially sought to be accepted but later on the Enquiry Officer proceeded in a posthaste manner without awaiting the completion of trial in

criminal case. Further, such an action is totally barred under Clause 19.4 of the Standing Orders/Regulations of the respondent-Bank, which contemplates to await disposal of the criminal trial, before proceeding with the domestic enquiry. However, once again as per notice dated 21.02.2004, the enquiry was sought to be proceeded with on 05.04.2004 where the petitioner reiterated the very same objections based upon the aforesaid clause. However, the said objection was rejected and the matter is being posted for further enquiry. Hence, the Writ Petition.

This Court granted interim direction as per orders in W.P.M.P.No.2322 of 2005, dated 08.02.2005 to the effect that the respondents are permitted to proceed with the enquiry but not to finalise the same.

In the counter-affidavit filed by the respondents, it is submitted that there is no dispute in regard to the filing of the charge-sheet on 16.01.2003 in the criminal case in C.C.No.117 of 2003 on the file of II Additional Judicial First Class Magistrate, Nellore. However, it is pointed out that the petitioner by using duplicate keys un-authorisedly opened the strong room of the Branch where money and valuable properties and records were kept and stealthily opened two almirahs in which cash and pledged gold ornaments were kept and committed theft worth Rs.70.84 lakhs consisting of Rs.6.84 lakhs cash and gold jewellery having gross weight of 18.353 Kgs. Therefore, on a complaint, filed with the Inspector of Police, No.3 Town Police Station (Crimes) Nellore, case was registered as a Crime No.254 x 317/2002, dated 17.11.2002. The petitioner was arrested at the Plot Form No.3 of Nellore Railway Station and cash of Rs.6.84 lakhs and gold jewellery weighing about 18.353 Kgs were recovered. Thereafter a charge-sheet was filed by the Police on 16.01.2003

and the same is still pending. However, the respondents are entitled to proceed with the disciplinary action independently that of the criminal case pending and the enquiry has already commenced. Further, it is pointed out that so far the trial has not yet commenced even after expiry of one year from the date of commission of offence as contemplated under the aforesaid Clause 19.4 of the Standing Orders/Regulations, therefore, it is open to the respondents to proceed with the domestic enquiry. It is further submitted that the allegations are quite serious nature and necessarily it contemplates both criminal action as well as domestic disciplinary action. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

Sri Jayanthi S.C. Shekar, the learned counsel appearing for the petitioner principally relying on Clause 19.4 of the Standing Orders, submits that having regard to the fact that admittedly charge-sheet has been filed in the criminal case and therefore, there is a commencement of trial and thus under the aforesaid clause, no disciplinary action can be proceeded with nor any enquiry can be conducted till the completion of the criminal case. Therefore, the respondents action in proceeding with the enquiry in spite of the objections specifically raised in this regard, is wholly un-sustainable and in the teeth of the very mandate as contemplated under the aforesaid Regulation.

Sri K.Gopala Krishna Murthy, the learned Standing Counsel appearing for the respondents submits that both the courses viz. one criminal action and another domestic enquiry, are totally independent and there is no necessity to await result in the other. Further, even as per the aforesaid clause, trial in the criminal case did not

commence within the prescribed period and therefore it is always open to the respondents to proceed with the domestic enquiry.

Having regard to the aforesaid and other detailed submissions as made from both the sides, and on perusal of the material, the main question which requires to be considered is as to whether on the facts and circumstances, the respondent-Bank is entitled to proceed with the domestic enquiry without awaiting completion of the criminal case as per Clause 19.4 of the Standing Orders/Regulations of the respondent-Bank ?

There is no dispute to the fact that while the petitioner was working as a Clerk-cum-Cashier at the relevant point of time, on the allegations of committing trespass, theft and misappropriation of funds etc., charge sheet was laid on the complaint filed by the respondents on 16.01.2003 in C.C.No.117 of 2003 which is pending on the file of the II Additional Judicial First Class Magistrate, Nellore. The said offence was alleged to have been committed by the petitioner on the intervening night of 16/17.11.2002. As per the case of the respondent-Bank, the petitioner, making use of duplicate keys, un-authorisedly opened the strong room, entered into the same and committed theft of substantial money and also the worth of gold as pointed out above. It is the case of the respondents that the petitioner was arrested at the plot Form No.III, Nellore Railway Station and the said cash and gold were recovered from him. Subsequent to the appointment of the Enquiry Officer, a notice was issued on 21.02.2004 for conducting domestic enquiry in respect of the said allegations. The enquiry did commence in the presence of the petitioner as well as the

Presenting Officer of the Zonal Office at Chennai. During the course of the said enquiry, the petitioner raised an objection pressing into the service the clause 19.4 of the Standing Orders to show that having regard to filing of the charge-sheet, trial did commence in the criminal case and therefore necessarily the domestic enquiry has to await. The said objection was sought to be repelled on the ground that since no trial as such commenced, it is not necessary to wait and the enquiry can be proceeded against him.

Before going into the main aspect, it is relevant to note the clause 19.4 of the Standing Orders, which reads as follows:

> If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of “gross misconduct” or of “minor misconduct”, as defined below, provided that if the authority which was to start prosecution proceedings refuses to do so or come to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in clause 19.11 and 19.12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months pay and allowances in lieu of notice as provided in Clause 19.3 supra. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 19.3 above shall apply”.

On a reading of the above clause, it emanates that in the event of any prosecution being laid for any offence on the same allegations and if the delinquent is not put on

trial within a year of the commission of the offence, the Management is entitled to deal domestically with such delinquent for acts of misconduct. Therefore, it has to be seen as to whether the delinquent/petitioner has been put on trial within a year of commission of the alleged offence. In this case, the offence was alleged to have been committed during the intervening night of 16/17-11-2002 and admittedly on the complaint filed by the respondents, the matter was inquired into and the petitioner was arrested and the alleged stolen articles including cash and gold were recovered from him and ultimately the charge-sheet was filed on 16.01.2003. During the course of arguments, it is pointed out from both the sides that the said case is still pending and examination of witnesses is yet to commence. It was further pointed out that there was challenge against the said proceedings by way of a Revision to this Court in Criminal Revision Case No.292 of 2003 which was disposed of by this Court on 17.03.2003 with a direction to dispose of the said case at the earliest. However, in spite of such direction given by this Court, it is stated that so far the prosecution did not commence its evidence and no witness has been examined so far. There is no dispute to this fact. Ultimately it boils down to appreciate the expression used in the aforesaid clause i.e. commencement of trial, and it has to be seen as to at what point or stage, it shall be deemed to commence and whether trial includes the entire proceedings as such, even by filing of the charge-sheet, can it be taken as the trial has commenced.

There is no dispute to the fact that the charge-sheet was filed but the examination of witnesses is yet to be done. In ***Union of India & Others v. Major General Madan Lal Yadav (Retd.,)*** considering the provisions of Section 123 of the Army Act, 1950

whereunder the similar expression was used namely “trial commences” and considering the scope of it, it was held that

“Trial means act of proving or judicial examination or determination of the issues including its own jurisdiction of the authority in accordance with law or adjudging guilty or innocence of accused including all stages necessary. Trial commences with performance of first act or steps necessary or essential to proceed with trial.”

In view of the aforesaid principles as laid down, no-doubt, trial is the main part of criminal proceedings. Once such proceeding gets initiated by lodging a complaint, it cannot be said that simply because a charge sheet is filed, there is commencement of trial as such. Filing of charge sheet is only in the process of the step-in-aid procedure contemplated for trying an offender or accused. It only pin points the actual point for consideration charge for which he is to be tried and on which the finding has to be ultimately given. Necessarily it contemplates proving or rebutting from both the sides in regard to such charge which can only be done by production of necessary evidence from both the sides. The prosecution has to prove its case by examining the necessary witnesses in respect of the charge or the allegations as contained therein followed later by evidence on behalf of the defence, if any. Though in technical terms, the trial can include every aspect where an action is being sought to be proceeded against, but, however, in the judicial jargon and procedure contemplated on the procedural lines, the trial only commences with examination of the witnesses and not otherwise. The trial is for the charge, which is made against the entire course of action preceding examination of any witness is only in aid of the commencement of trial. Therefore, admittedly in this case, since no

evidence has yet been taken, it cannot be said that trial has commenced. Admittedly, the proceedings are pending for quite a long time and in spite of directions given by this court, the same is not being proceeded with nor completed. Further on a wholesome approach of the object as laying behind the aforesaid clauses is only to see if really the delinquent is being sought to be prosecuted and trial is likely to be over in a shorter time i.e., period of one year or so, then it was contemplated to await the said decision. The purpose is to wait where early trial is completed. However, where there is no chance of either commencement or completion of the trial before a Criminal Court, the time limit prescribed in the aforesaid clause got expired long back. It is always open for the Management to proceed with the disciplinary enquiry. Even otherwise as held in ***State of Rajasthan v. B.K. Meena and others*** **,** it is not necessary that in every case domestic investigation should await the trial on the criminal side. It was held therein that stay of disciplinary proceedings by the authorities till conclusion of the criminal trial can not be as a matter of course and it should be based on relevant factors and keeping in view the principles laid down by the Apex Court which is in the interest of administration and delinquent, the proceedings be concluded expeditiously. In the present case, though the offence occurred on 16/17.11.2002, still the proceedings are on, which is quite contrary to the observations as made in the aforesaid decision. In the circumstances, it has to be held that in the present case there being no commencement or completion of trial on the criminal side with the examination of witnesses as such, within the prescribed period, it cannot be said that the domestic enquiry has to be stalled or stayed in it till the completion of the criminal action. I do not find any merits in the Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

28.03.2005

Chvn.

Note:

L.R. copy to be marked.

B/o Chvn.

To

One fair copy to the Hon'ble Sri Justice B.Prakash Rao (for His Lordship's kind perusal)

1 The Branch Manager, Catholic Syrian Bank Ltd.,
Branch Officer, Nellore, A.P.,
2 The Deputy Zonal Manager, Catholic Syrian Bank Ltd.,
Zonal Office, Ernakulam, Kerala State.
3 The Assistant General Manager (Personnel) (Disciplinary Authority),
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4 The Deputy General Manager (I & V) Head Office, Catholic Syrian
Bank Ltd., Thirssur, Kerala State.

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